

IN THE SUPREME COURT FOR THE STATE OF ALASKA

JEFF GARNESS, LISA GARNESS,)
SHANNON CARTE, DONALD)
CRAFTS, SUSAN M. KENT-CRAFTS, and)
CAROLYN "CARE" CLIFT,)

Appellants,)

v.)

LT. GOVERNOR KEVIN MEYER, in his)
Official capacity as Lt. Governor for the)
State of Alaska, and GALIL FENUMIAI, in)
Her official capacity as Director of the)
Division of Elections,)

Appellees,)

ELIZABETH A. HODGES SNYDER,)

Intervenor.)

Case No. S-17951

MASTER'S REPORT OF FINDINGS

This judge was appointed Special Master in this recount appeal to consider factual questions raised in Appellant's Statement of Points on Appeal.¹ This judge held an evidentiary hearing on December 22 and 23, 2020 in the related election contest 3AN-20-09661CI. At the hearing the parties did not offer evidence with respect to the recount appeal and indicated they would rely on the appellate record in this matter.

Having reviewed the record, including all questioned ballots cast in the election at issue,² the Master makes the following report of findings³ with respect to questions raised by the statement of points on appeal:

¹ S-17951 (*Order Appointment of Special Master, Briefing Schedule, Oral Argument Date*).

² See *Fischer v. Stout*, 741 P. 2d 217, 221 (Alaska 1987) (Supreme Court reviews all challenged ballots in recount appeal, not just those raised on appeal).

S-17951

Jeff Garness, et al. v. Lt. Gov. Kevin Meyer, et al.
Master's Report of Findings

1. Four overvoted ballots were counted in violation of the law and Division of Elections regulations and procedures.

This appeal point concerns three ballots counted but challenged as overvotes and one ballot rejected as an undervote.⁴ [R. 4, 13, 20, 17]

(a) A representative of the Pruitt campaign challenged a ballot as an overvote, asserting “overvote: markings in multiple ovals.” [R. 4] The Division resolved the challenge by counting the vote for Snyder. [R. 4] Review of the ballot reflects that, in the box for Alaska House District 27, the oval for Elizabeth Snyder is completely filled in. [R. 5] There is also a dot inside the write-in oval but that oval is not filled in. [R. 5] There are no other markings on the write-in line and no name written. The dot in the write-in oval does not clearly indicate the voter’s intent to vote for more than one candidate, given the failure to write in a name and given the fact that the voter filled in the oval completely to indicate intent to vote for a candidate.⁵ The decision to count this ballot was consistent with this court’s prior decisions.⁶

(b) A representative of the Pruitt campaign challenged a ballot as an overvote, asserting “overvote: there is a mark in the oval next to Pruitt’s name. Should not count.” [R. 13] The District resolved the challenge by counting the vote for Snyder. [R. 13] Review of the ballot reflects that, in the box for Alaska House

³ Because the order appointing this judge Special Master directs the Master to make a report of findings regarding factual questions, this report does not recommend how the Court should rule on appeal points but does note whether the Division’s resolution of any challenge was consistent with this Court’s prior decisions or applicable law.

⁴ Counsel for Representative Pruitt clarified at the hearing on December 23, 2020 that the challenged undervote was part of this appeal point and that the challenge and ballot at issue was contained in Ex. 32, which was not admitted at the hearing but which corresponds with R. 17-18 of the appellate record.

⁵⁵ See *Edgmon v. State, Office of the Lieutenant Governor, Division of Elections*, 142 P.3d 1154, 1157 (Alaska 2007).

⁶ *Id.*

District 27, the oval next to Snyder's name is completely filled in. There is also a mark on the oval next to Pruitt's name, outside the oval but touching it. The mark appears to be a full circle around the oval. On the ballot, no other oval is marked with a circle; all other markings are fully filled-in ovals. The circle around the oval next to Pruitt's name does not clearly indicate the voter's intent to vote for more than one candidate because based on the way the voter filled in the other races it appears the voter used a completely shaded oval to indicate an intent to vote for a candidate. The decision to count this ballot was consistent with this court's prior decisions.⁷

(c) A representative of the Pruitt campaign challenged a ballot as an overvote, asserting "overvote: Mark in bubble next to write-in." [R. 20] The Division resolved the challenge by counting the vote for Snyder. [R. 20] In the box for Alaska House District 27, the oval next to Snyder's name is filled in, with a strip of white showing at the bottom. [R. 21] There is a mark on the oval next to the write-in line. The mark touches the oval at 5 o'clock but is primarily outside it, running approximately 45 degrees up to the right. There is no name written in the write-in line. [R. 21] The mark does not clearly indicate the voter's intent to vote for more than one candidate. The decision to count this ballot was consistent with this court's prior decisions.⁸

(d) A representative of the Pruitt campaign challenged the rejection of a ballot, asserting: "Director determined no mark in oval but voter circled "Republican Nominee" so challenger believes it is possible to ascertain intent adequately." [R.

⁷ *Id.*

⁸ *Id.*

17] The Division resolved the challenge by not counting the vote. Review of the ballot reflects that the voter placed no marks in the box for the United States President and Vice President, circled “Republican Nominee” for the United States Senator, United States Representative, State Senator District N, and State Representative District 27. The voter filled the oval in completely in the “No” ovals for Justice Carney and Judge Wollenberg, and placed no marks in the remaining boxes for judicial candidates or ballot measures.

There is no marking in the oval opposite Lance Pruitt’s name, but, as in many of the races, “Republican Nominee” is circled. That marking is not substantially inside the oval and it does not touch the oval.

Review of the entire ballot indicates that the voter may not have understood how to properly mark a ballot according to AS 15.15.360 because the voter circled the political party affiliation of political candidates. While the voter completely filled in the “No” ovals for Justice Carney and Judge Wollenberg, those candidates do not have party affiliations, which partially explains the difference in marking those ballots. In addition, if the voter marked the ballot in order of the races in the ballot form, circling “Republican Nominee” to indicate an intent to vote for a candidate, the voter would have completed all the executive and legislative races this way before arriving at the judges. It would have been impossible to use this method to reject Justice Carney and Judge Wollenberg, both because those candidates had no political affiliation and because, as judicial candidates, they were unopposed and there was no way to reject them by circling another candidate.

The voter knew how not to cast a vote—the voter made no markings on the presidential race, most of the judges’ races, and the ballot measures. In this case, the circle around “Republican Nominee” suggest the voter’s subjective intent to cast a vote for Lance Pruitt, but the markings do not comply with AS 15.15.360(1) and (5).⁹ The decision to reject this ballot was consistent with this court’s prior decisions.¹⁰

2. Two ballots voted early were counted even though the residents did not live in the district, and therefore were not eligible to cast their ballots for House District 27.

There is no evidence of two ballots challenged on residency grounds or of the Division’s resolution of the challenge in the record of this recount appeal, nor is there evidence of any voter’s residency.

3. Five ballots voted absentee were counted even though the residents were registered in another jurisdiction in violation of AS 15.05.010(4).

There is no evidence of five absentee ballots challenged on residency grounds or of the Division’s resolution of the challenge in the record of this recount appeal, nor is there evidence in the record of any absentee voter’s residency.

4. Six ballots were improperly denied their right to vote in House District 27 Precinct 915 based on the failure to provide proper notice of the polling place location change in violation of the law and Division of Elections regulations and procedures.

The master is unable to report findings raised by this point on appeal based on the record in this recount appeal. When a voter has not cast a ballot, no ballot can be counted or rejected, as contemplated by AS 15.20.510.¹¹ Representative Pruitt has raised the Division’s failure to comply with AS 15.10.090 when it changed the polling place for 27-915 in the

⁹ *Miller v. Treadwell*, 245 P.3d 877-78 (Alaska 2010).

¹⁰ *Id.*

¹¹ *Cissna v. Stout*, 931 P.2d 363, 371 (Alaska 1996).

election contest in 3AN-20-09661CI. Those findings are incorporated into this report for purposes of resolving this point if the Court considers this allegation in the recount appeal.

5. Numerous other violations of the law occurred in the conduct and counting of the general election held November 3, 2020 in the various precincts of House District 27, depriving the voters of their right to a fair and objective election.

The issue in a recount appeal is whether particular votes or classes of votes were properly counted or rejected.¹² Challenges to the conduct of elections are properly brought in an election contest under AS 15.20.540. The master has reviewed all questioned ballots cast in the election at issue,¹³ and all other material contained the appellate record and reports that the Division's resolution of all the remaining challenged ballots (but not challenged on appeal) in this election is consistent with applicable law. The master reports the following facts:

A representative for the Snyder campaign challenged a ballot asserting: "reason for rejection, personal rep. signed envelope but not on correct side, violates voter intent and voters right." [R. 1] An individual appeared to challenge the rejection of the same ballot. [R. 2] The Division resolved the challenge by rejecting the ballot. [R. 1-2] Review of the ballot reflects that the special needs representative failed to witness the voter's certificate. [R. 3]

A representative for the Pruitt campaign challenged the rejection of five ballots because the voter certificate did not contain proof of identity as required by AS 15.20.081(f) but where the voter's signature was witnessed. [R. 7-12] The Division resolved the objections by rejecting the ballots. [R. 7] A representative for the Pruitt campaign challenged the counting of all unwitnessed absentee ballots. The challenge form does not reflect the Division's resolution of the challenge but the master infers that the Division rejected the

¹² *Nageak v. Mallot*, 426 P.3d 930, 940 (Alaska 2018).

¹³ *See Fischer v. Stout*, 741 P. 2d 217, 221 (Alaska 1987).

challenge and counted those votes (the record does not reflect how many votes that involves). [R. 16] An individual challenged the rejection of an absentee ballot where the voter's certificate did not contain proof of identity and was not witnessed, asserting that the Division should conduct a signature review. [R. 23-24] The Division resolved the challenge by rejecting the ballot. [R. 23]

A representative for the ADP (presumably, the Alaska Democratic Party) challenged the rejection of an absentee ballot, asserting that the ballot should be counted even though it was postmarked late "due to the well documented efforts of USPS Administration to thwart voting by mail." [R. 25] The Division resolved the challenge by rejecting the ballot as untimely postmarked. [R. 25] Review of the voter certificate indicates that the voter executed the certificate on November 3, 2020. [R. 26] The envelope is postmarked November 4, 2020. [R. 27]

A representative for the ADP (presumably, the Alaska Democratic Party) challenged the rejection of an absentee ballot, asserting that the ballot should be counted even though it was postmarked late "due to the well documented efforts of USPS Administration, it is likely that the voter mailed ballot on time." [R. 28] The Division resolved the objection by rejecting the absentee ballot as untimely: "Valid postmark 11/5/2020." Review of the voter certificate does not indicate when it was signed and the envelope is postmarked November 5, 2020. [R. 29-30]

A representative for the ARP (presumably, the Alaska Republican Party) challenged the rejection of an absentee ballot, asserting that the ballot should be counted even though it was postmarked late ("Heard it was mailed on time, checking to be sure of receipt date"). [R. 31] The Division resolved the objection by rejecting the absentee ballot as untimely:

“Valid postmark 11/5/2020.” [R. 31] The voter certificate does not indicate when it was signed and the envelope is postmarked November 5, 2020. [R. 32-33]

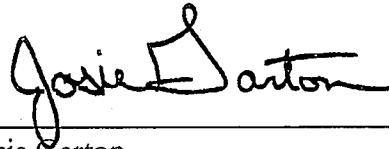
A representative for the ADP (presumably, the Alaska Democratic Party) challenged two special needs ballots, asserting that the voter voted another voter’s special needs ballot. [R. 34, 36] The Division resolved both challenges by counting the votes, finding that there was no other ballot on file for the voters. [R. 34, 36] Review of the two special needs ballot oath and affidavit envelope reveals that Cristi Miller acted as representative for special needs voters Cassie Miller and Christopher Miller. [R. 35, 37] On the side of Cassie’s envelope for the representative’s certificate, Cristi Miller wrote “Chris Miller” in Box #5, where the representative indicates who the voter is. [R. 35] On the side of the envelope to be completed by the voter and representative, Cassie’s information is properly filled in. [R. 35] On the side of Christopher’s envelope for the representative’s certificate, Cristi Miller wrote “Cassie Miller” in Box #5, where the representative indicates who the voter is. [R. 35] On the side of the envelope to be completed by the voter and representative, Christopher’s information is properly filled in. [R. 35] Thus, with respect to these two special needs ballots, the representative switched the names in Box #5 but neither voter cast more than one vote and the rest of the certificates are properly executed.

The Division’s resolution of these challenges was consistent with applicable law and does not support a determination that voters were deprived of a fair and objective election, if the Court considers this appeal point in the recount appeal.

6. This court should promptly conduct a complete review of the election and the recount and require a retabulation of the votes, properly and legally cast, consistent with the law, in the November 3, 2020 general election for the State House in District 27.

This appeal point seeks relief not normally available in a recount appeal and does not raise particular factual issues other than those raised in the other points on appeal.

DONE this 29th day of December 2020, at Anchorage, Alaska.



Josie Garton
Special Master, Superior Court Judge

I certify that on 12/29/2020
a copy of the above was mailed to
each of the following at their
addresses of record:

Stacy Stone; Thomas Flynn; Laura Fox;
Margaret Paton-Walsh; Jennifer Alexander;
Holly Wells; Ryan Montgomery-Sythe

Elsie Roehl

